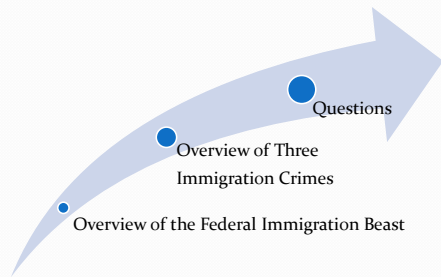


CRIMINAL IMMIGRATION LAW

A MARIANAS UPDATE

SUMMARY OF PRESENTATION



Federal Immigration Law:



Federal Immigration Law:

Purpose:
Benefits, Visas, Green Cards, etc.

Players:
Immigrant & Nonimmigrant Aliens & Relatives – Beneficiaries and Petitioners
DHS - Specifically USCIS
DOS - Consulates Abroad

Law:
INA and Regulations (& CNRA!)

Pleading:
Petition for Benefits (i.e., Form I-130, etc.)

**Administrative:
Benefits**

Federal Immigration Law:

Purpose:
Removal, or Relief from Removal

Players:
Aliens – “Respondent”
Retained Defense Counsel
DHS – Specifically ICE, CBP, DRO, & Assistant Chief Counsels
DOJ – Immigration Judge, BIA

Law:
INA, Regulations, Caselaw (& CNRA!)

Pleading:
Notice to Appear (NTA)

**Civil:
Removal**

Federal Immigration Law:

Purpose:
Prosecution of Alleged Crime

Law:
INA (Title 8), Title 18, Caselaw

Pleading:
Criminal Complaint, Info or Indictment

Players:
“Defendant”
Defense Att’y – Retained / Ct. Apt.
DHS – Specifically ICE S/A w/in OI
DOJ – AUSA
Judicial Branch – Dist. Ct. Judge

**Criminal:
Prison**

CRIMINAL IMMIGRATION LAW: AN AUSA's PERSPECTIVE

WHILE I'M NOT HERE TO GIVE
YOU A GREEN CARD...

... REST ASSURED THAT I WILL NOT
REMOVE OR DEPORT YOU...

...BUT I MAY TRY TO
SEND YOU TO PRISON.



SOME TYPICAL PROSECUTIONS

Title
8

§ 1326

§ 1325

§ 1324

Title
18

§ 1546

§ 1425

§ 922

TYPICAL PROSECUTIONS

Title
8

§ 1326

REENTRY AFTER REMOVAL

§ 1325

MARRIAGE FRAUD

§ 1324

ALIEN SMUGGLING

8 U.S.C. § 1326: REENTRY OF REMOVED ALIENS

BASIC ELEMENTS

- 1) Defendant is an Alien!
- 2) Defendant was previously removed, etc.
- 3) Defendant thereafter
 - a) Was "found in" or "entered" the U.S., or
 - b) "Attempted to enter" the U.S.
- 4) Without having obtained permission to enter.

STATUTORY! BASIC PENALTIES: 1326

- No Enhancements:
 - ≤ 2 years imprisonment
- Paragraph (b) Enhancements:
 - (b)(i) = ≤ 10 years imprisonment
 - (b)(ii) = ≤ 20 years imprisonment

1326 Twists in the Marianas:

- Does a CNMI deportation that occurred prior to Nov. 28, 2009, suffice as a prior removal?

Probably not...

- Does a CNMI deportation order enforced by DHS on or after Nov. 28, 2009, suffice as a prior removal?

Probably...

8 U.S.C. § 1325(c): MARRIAGE FRAUD

BASIC ELEMENTS

- 1) Defendant knowingly
- 2) Entered into a marriage
- 3) For the purpose of evading any U.S. immigration law

STATUTORY BASIC PENALTIES: 1325(c)

- ≤ 5 years imprisonment, and
- ≤ \$250,000 fine

No Enhancements

Marriage Fraud Scenarios

Bilateral

- Two Defendants
- Bargained for Exchange
- One marries for money; the other for imm. benefits
- No intent to establish a life together by either party
- Typically live apart
- May or may not appear and act like a married couple

Unilateral

- One Defendant
- Fraud in the Inducement
- Defendant feigns love to receive imm. benefits
- No intent to establish a life together by Defendant
- Typically live together
- May appear and act like a normal dysfunctional married couple

1325(c) Twist in the Marianas:

- If a person enters into a marriage so that he or she can receive CNMI immigration benefits, has that person violated 8 U.S.C. 1325(c)?

Probably not...

8 U.S.C. § 1324: ALIEN SMUGGLING

BASIC ELEMENTS

Depends on the Charge!



BASIC ELEMENTS: 1324(a)(2)

- 1) Defendant, knowing or in reckless disregard of the fact that an alien is not permitted to come, enter, or reside in U.S.
- 2) Brings that alien to, or attempts to bring that alien to, the U.S.
- 3) Extras: \$, future crime, non-POE



STATUTORY!

BASIC PENALTIES: 1324(a)(2)

- No Enhancements:
 - Class A Misdemeanor;
 - ≤ 1 year imprisonment
- Subparagraph (B) Enhancements:
 - ≤ 10 years imprisonment
 - (i) or (ii) = 3 year mandatory minimum!



1324 Twist in the Marianas:

- If a person smuggles aliens from Saipan to Guam after Nov. 28, 2009, are they bringing the aliens into the United States?

Probably...

Prosecutorial Discretion

- “I work on four-mou land [less than one acre, a larger than average holding] year in and year out, from dawn to dusk, but after taxes and providing for your own needs, I make \$20 a year. You make that much in one day. No matter how much it cost to get there, or how hard the work is, America is still better than this.”

-A Chinese farmer

QUESTIONS?



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